Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act	)	
of 1996	)	

NYNEX COMMENTS

NYNEX Telephone Companies

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

SUMMARY

In these Comments, NYNEX proposes a framework that the Commission should use to interpret the Telecommunications Act of 1996 (the "Act") to best promote competition for local exchange and exchange access service through interconnection, network unbundling and resale.

The Act's interconnection requirement allows a competitive local exchange carrier (CLEC) to interconnect its network with the incumbent LEC's network so that the CLEC may provide local exchange and exchange access service to its customers. The Act's unbundling requirement allows a CLEC to fill out its network by combining its owns facilities with facilities provided by the incumbent LEC. The Act's resale requirement allows an entity to provide local exchange service, without having to build its own facilities, through resale of LEC retail services.

When an incumbent LEC interconnects its network with the facilities and equipment of a requesting carrier and provides unbundled network elements for the transmission and routing of local exchange and exchange access service, the facilities and equipment used by the incumbent LEC to provide interconnection and any network elements provided by the LEC are to be priced at cost plus a reasonable profit. Furthermore, both carriers are entitled to reciprocal compensation for terminating traffic on each other's network. When an incumbent LEC offers its retail services for resale, the incumbent LEC may charge the reseller its retail rate minus avoided costs. Because there is no interconnection of networks, the incumbent LEC does

not charge for interconnection facilities or network elements and the reciprocal compensation provisions of the Act do not apply.

NYNEX also shows in these Comments that the interconnection obligation of Section 251(c)(2) only applies to interconnection between two facilities-based competitors for the purpose of providing local exchange and exchange access service, including interconnection with CMRS providers. It does not apply to exchange access services provided by incumbent LECs to interexchange carriers (ICs). Nor does Section 251(c)(2) apply to interconnection between incumbent LECs and non-competing, neighboring LECs (often referred to as independent telephone companies).

We also show that the network unbundling requirements of Section 251(c)(3) do not require an incumbent LEC to provide access to network elements solely for the purpose of originating and terminating interexchange toll traffic. We further show that competing carriers cannot require an incumbent LEC to combine network elements to form a service that the LEC offers for resale.

It is critical that if the Commission adopts pricing guidelines, those guidelines must give LECs a reasonable opportunity to recover their costs. The Commission should adopt "accounting costs" as the standard for determining the reasonableness of interconnection rates. This would allow the LEC to charge interconnectors for the costs of the facilities requested, including a reasonable amount of joint and common costs associated with those facilities. The Commission should not adopt proxy factors such as the Benchmark Cost Model or existing access rate elements.

The Commission should only require incumbent LECs to provide a minimum set of unbundled elements. These elements should be the local loop, switching, transport facilities, and network signaling and databases. Further unbundling of the network should be left to negotiations between carriers. Sub-loop unbundling should not be required.

The Commission should allow LECs and State commissions to impose reasonable restrictions on resale. Such resale services must be priced to allow the LEC to recover any additional costs that it incurs in offering a service for resale.

We also show that the Act's reciprocal compensation requirements preclude the Commission from imposing compensation regimes such as Bill-and-Keep. Such an arrangement can only be established if both carriers agree to waive their rights to recover their respective additional costs of terminating traffic on each other's network.

Finally, NYNEX shows that the Act does not preclude reasonable differentiation among carriers. Thus, the New York Public Service Commission's "Play or Pay" approach to interconnection is consistent with the Act's goal of promoting universal service.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

NYNEX COMMENTS

The NYNEX Telephone Companies ("NYNEX")[1] hereby comment on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.

I. INTRODUCTION

In the NPRM, the Commission seeks comment on its proposed rules for implementing the interconnection provisions of the Telecommunications Act of 1996 (the "Act"). These rules will not only establish the framework for opening local telephone markets to competition, they will also play a central role in evaluating Bell Operating Company (BOC) compliance with the checklist requirements of Section 271 for entry into in-region long-distance service.

The Act contemplates that the Commission should establish a broad pro-competitive, deregulatory national framework for interconnection and leave details to carrier negotiations and State commissions. The Commission's objective in this proceeding should thus

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[1] The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

be to ensure that its rules allow competition in the local exchange market to develop without burdening incumbent local exchange carriers (LECs) with unnecessary regulation and without diminishing the role reserved to the States by the Act.

As noted in the NPRM,[2] Congress was concerned that the development of competition in all telecommunications markets was being stymied by a morass of regulatory barriers. The Commission must therefore guard against creating a new set of detailed rules and regulations that will hamper the development of competition in these markets. For example, requiring incumbent LECs to unbundle a multitude of network elements is not necessary to advance competition in the local exchange market. As Congress recognized when it drafted the specific unbundling requirements contained in the Section 271 checklist, the loop, the switch and local transport are the network elements needed by diverse facilities-based competitors wishing to enter the local exchange market. Further unbundling should be left to the negotiation process where incumbent LECs can address the unique needs of specific new entrants.

In developing its rules in this proceeding, the Commission must keep in mind four general themes: Are the rules consistent with the pro-competitive and deregulatory goals and objectives of the Act? Will they foster local competition through facilities-based market entrants? Will the rules allow incumbent LECs to recover their costs? Will the rules preserve and advance universal service?

In these Comments, NYNEX will propose a framework that the Commission should utilize in interpreting and implementing the interconnection, unbundling, resale,

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[2] NPRM, ¶ 12.

reciproca' compensation and pricing provisions of the Act. Only by focusing on and distinguishing among these very specific and different obligations will the Commission be able to properly accomplish its historic task of advancing competition and deregulation as mandated by Congress.

II. THE ACT's OBLIGATIONS ARE DESIGNED TO PROMOTE COMPETITION FOR LOCAL EXCHANGE AND EXCHANGE ACCESS SERVICE THROUGH INTERCONNECTION, AVAILABILITY OF UNBUNDLED NETWORK ELEMENTS AND RESALE OF INCUMBENT LEC RETAIL SERVICES.

The Act establishes a "new model" for achieving interconnection between competing LEC networks.[3] Sections 251 and 252 rely primarily on voluntary negotiation and agreement between incumbent LECs and competing carriers. To the extent that interconnection negotiations break down, review is a matter reserved to the State commissions with recourse to the federal courts.[4] While Section 251(d) requires the Commission to establish regulations necessary to implement the requirements of Section 251, promulgating overly detailed rules would be inconsistent with Congress' intent that voluntary negotiations, not mandatory regulations, be the primary vehicle for achieving interconnection agreements between carriers. It would also hamper a State commission's ability to consider other approaches that better reflect unique State circumstances or policies which are nevertheless consistent with the Act.

Although the Act is designed to remove regulatory barriers that hinder the introduction of competition in the local exchange market, Congress recognized that it would still be difficult, if not impossible, for competitors to enter the local market with their own networks

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[3] This section addresses ¶¶ 14 to 24 of the NPRM.

[4] See Section 252(e).

entirely in place. Section 251 thus imposes specific obligations on incumbent LECs that will allow new entrants to compete against incumbent LECs through the use of interconnection, unbundled network elements and/or resale.

A. Interconnection

Section 251(c)(2) requires an incumbent LEC to interconnect its facilities with the facilities of a requesting telecommunications carrier for the transmission and routing of local exchange and exchange access service. In this respect, interconnection represents the physical point where the two networks meet and traffic is exchanged. Under Section 251(c)(2), a competitive local exchange carrier (CLEC)[5] may interconnect with an incumbent LEC for the purpose of terminating to the incumbent LEC's customers local calls that originate on the network of the CLEC. Alternatively, the CLEC may interconnect for the purpose of offering exchange access service to an interexchange carrier (IC), and thus charge the IC carrier access charges, in order to enable the IC to offer interexchange service to the CLEC's customers.[6]

However, as discussed in greater detail below, the statutory language, legislative history, and overall structure and purpose of the Act make two things clear. First, neither § 251(c)(2) itself, nor the associated pricing standard of § 252(d)(1), apply to the transport and termination of traffic across interconnected facilities. The only obligation created by § 251(c)(2)

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[5] An interexchange carrier can be a CLEC if it seeks to provide local exchange and exchange access service.

[6] To accomplish this, the CLEC would likely utilize the LEC's access tandem. In this case, the CLEC and LEC would split the access charges billed to the IC, often referred to as meet point billing. If the CLEC does not use any part of the LEC network (i.e., bypasses directly to the IC POP), there would be no splitting of access charges.

is the establishment and maintenance of physical facilities connecting the networks of the requesting carrier and the incumbent LEC; § 251(d)(1) only relates to the pricing of such facilities. Second, § 251(c)(2) does not apply to interconnection between an IC and an incumbent LEC for the transmission and routing of interexchange services. The provision of interexchange access services by an incumbent LEC to an IC continues to be governed by existing State and federal carrier access rules, and not by Section 251(c)(2).[7] For both of these reasons, § 251(c)(2) cannot be viewed as a statutory mandate for "access charge reform."[8]

B. Unbundling

Section 251(c)(3) requires an incumbent LEC to unbundle its network elements "in a manner that allows requesting carriers to combine such elements in order to provide ... telecommunications service." Congress realized that most facilities-based competitors will lack a ubiquitous network.[9] To remedy this Congress required incumbent LECs to make their network facilities and equipment available to competitors where technically feasible. Thus, Section 251(c)(3) would enable a CLEC to fill out its network by combining its own switches and transport facilities with incumbent LEC loops in order to serve end users. Alternatively, a

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[7] In this case, the Commission's Expanded Interconnection rules would provide competitive access providers (CAPs) the ability to offer unbundled dedicated and/or common transport to ICs.

[8] This is not to say that anything in the Act prohibits the Commission from reviewing access charges or from mandating rate and rate structure changes where appropriate. Any such initiatives, however, would be governed by existing rules and principles related to access, and not by §§ 251(c)(2) or 251(d)(1). We submit that the appropriate contexts in which to consider such changes are provided by the universal service docket and the Commission's proposed access reform proceeding.

[9] See Joint Explanatory Statement at 148 ("some facilities and capabilities ... will likely need to be obtained from the incumbent local exchange carrier as network elements").

cable company which wanted to become a CLEC could utilize its own loops and transport facilities and obtain local switching from the incumbent LEC.

NYNEX agrees that the unbundled network elements can be used by the requesting carrier to fill out its network to provide any telecommunications service that it wants (both local and long-distance, intrastate and interstate) to its customers using these facilities. NYNEX believes that network elements need only be provided to carriers that have their own facilities and, if a carrier has no facilities, it should rely on the resale provisions of the Act. However, as the Commission correctly notes,[10] an incumbent LEC is not required to provide access to network elements, such as the local loop, solely for the purpose of originating and terminating interexchange toll traffic. The incumbent LEC's statutory obligation is to provide unbundled access to network facilities and equipment. The Act imposes no obligation on an incumbent LEC to unbundle its network so that a requesting carrier may only offer a jurisdictionally distinct service, such as switching for interstate exchange access service. As the Commission points out,[11] allowing ICs to circumvent Part 69 access charges by purchasing network elements under Section 251(c)(3) solely for the purpose of obtaining exchange access is inconsistent with other provisions of Section 251, contrary to Congress' focus on promoting local competition, and would effect a fundamental jurisdictional shift by placing interstate access charges under the administration of State commissions through the application of the arbitration procedures of Section 252 of the Act.

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[10] NPRM, ¶ 164.

[11] NPRM, ¶ 164.

C. Resale

Section 251(c)(4) requires an incumbent LEC to offer for resale, at a wholesale rate, any telecommunications service that the incumbent LEC offers to end users at retail. Congress recognized that some new entrants would lack any local facilities but would still want to provide local exchange services. Thus, an IC which wanted to provide "one stop" shopping to its long-distance customers could rapidly enter the market via resale without having to expend any capital on constructing a network. After establishing itself as a reseller, the new entrant could then build out its own local facilities, if it so desired.

In the NPRM,[12] the Commission suggests that the Act may allow new entrants an alternative way to "resell" the services of incumbent LECs in addition to the specific resale provision in Section 251(c)(4). The Commission proposes that requesting carriers can order and ask the LEC to combine network elements to offer the same services an incumbent LEC offers for resale. As discussed in greater detail below, this proposal is totally at odds with the statutory scheme established by Congress and would in the long run stifle, not promote, local competition.

D. Pricing

The relationship of the interconnection, unbundling and resale requirements of Section 251 with the reciprocal compensation and pricing standards of Section 252 is clear. Section 252 establishes the procedures for approval of voluntarily negotiated agreements between incumbent LECs and requesting telecommunications carriers to provide interconnection. If the negotiations between carriers break down, Section 252 sets forth the procedures to be used

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[12] NPRM, ¶ 85.

by a State commission to arbitrate disputes, and establishes pricing standards for a State commission to follow in resolving these disputes.

When an incumbent LEC interconnects its network with the facilities and equipment of a requesting carrier and provides unbundled network elements for the transmission and routing of local exchange and exchange access service, Section 252(d)(1) states that the facilities and equipment used by the incumbent LEC to provide interconnection and any network elements provided by the incumbent LEC are to be priced at cost plus a reasonable profit. Furthermore, under Section 252(d)(2), both parties are entitled to reciprocal compensation to recover their "additional" costs for transporting and terminating calls on each other's network that originate on the network facilities of the other carrier. Under Section 252(d)(3), when an incumbent LEC offers its retail services for resale, the incumbent LEC may charge the reseller its retail rate minus avoided costs. Since under resale there is no interconnection of networks, the incumbent LEC does not charge for interconnection facilities or network elements and the reciprocal compensation provisions of the Act do not apply.

NYNEX believes that the foregoing framework properly interprets the relationship of the interconnection, unbundling, resale, reciprocal compensation and pricing provisions of the Act. If the Commission adopts this framework, it will achieve Congress' goal of promoting facilities-based competition; it will enable incumbent LECs to recover their costs of providing interconnection, network elements and resale services; and it will preserve and advance universal service.

III. SECTION 251(C)(2) ONLY APPLIES TO INTERCONNECTION BETWEEN TWO FACILITIES-BASED COMPETITORS FOR THE PURPOSE OF PROVIDING LOCAL EXCHANGE AND EXCHANGE ACCESS SERVICE. IT DOES NOT APPLY TO EXCHANGE ACCESS SERVICES PROVIDED BY INCUMBENT LECs TO INTEREXCHANGE CARRIERS.

Some ICs have argued that Section 251(c)(2) applies to interconnection between incumbent LECs and ICs for the purpose of providing carrier access services, and that such services must therefore be repriced on the basis of the Section 251(d)(1) "cost plus" standard.[13] For the reasons set forth below, it is clear that the Act was not intended to have any effect on existing carrier access rates and that Section 251(c)(2) relates solely to the physical interconnection of an incumbent LEC's network with the network of a facilities-based competitor so that the competitor may provide local exchange and exchange access service. It does not apply to an incumbent LEC's interconnection with an IC to enable the IC to transmit and route interexchange traffic.[14]

A. Statutory Language

As the NPRM correctly concludes, the language of 251(c)(2) clearly establishes that this section was not intended to apply to interconnection for the provision of interexchange services.[15] Section 251(c)(2) provides as follows:

> "In addition to the duties contained in [§ 251(b)], each incumbent local exchange carrier has . . . [t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, *interconnection with the local exchange carrier's network*

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[13] See, NPRM, ¶¶ 159-160.

[14] This section is concerned solely with the scope of § 251(c)(2). The relationship between § 251(c)(3) and carrier access is dealt with in Section IV of these comments, below.

[15] NPRM, ¶¶ 160 et seq.

. . . for the transmission and routing of telephone exchange service and exchange access . . . ." [Emphasis supplied]

Two key principles concerning the scope of § 251(c)(2) are clearly established by this language. The first is that the obligation imposed by the section relates to *interconnection*. That word should be interpreted in accordance with its plain meaning. Interconnection refers to the establishment and maintenance of physical connections between networks. It does *not* include the transport or termination of traffic delivered over such facilities.

Interpretation of the interconnection obligation in accordance with its plain meaning is supported by the fact that the Act makes separate provision for at least some transport and termination services in §§ 251(b)(5) and 252(d)(2). Thus, interconnection on the one hand, and transport and termination on the other, are dealt with separately in the Act, both as to the substantive obligation and as to the associated pricing standard. Section 251(c)(2) therefore should not be regarded as having any relevance to the pricing of call transport services (including originating and terminating carrier access). The pricing rules for transport services are established by § 251(d)(2).[16] The pricing of carrier access services continues to be governed by the Commission's Part 69 regulations.[17]

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[16] Section 252(d)(2) does not apply to carrier access. The section refers to the recovery of the costs associated "with the transport and termination on each carrier's network facilities of *calls that originate on the network facilities of the other carrier*" (emphasis supplied). IC-carried toll calls of course do not, in general, "originate on the network facilities" of the IC.

[17] This interpretation of the scope of § 251(c)(2) (*i.e.*, that it relates to interconnection itself and not to the transport of traffic over interconnected facilities) is also supported by the reference in the section to "equipment" and "facilities".

The second key principle implicit in the language of § 251(c)(2) is that the incumbent LEC is only required to physically interconnect its network with the network of a requesting carrier so that the requesting carrier can provide both local exchange and exchange access services.[18] Section 251(c)(2), and the associated pricing standard of Section 252(d)(1), do not apply to interconnection between an incumbent LEC and an IC for the purpose of transmitting and routing interexchange or telephone toll service.

The terms "telephone exchange service," "exchange access service," and "telephone toll service" are defined as follows in § 3 of the Communications Act, as amended by the 1996 Act:

> "The term 'telephone exchange service' means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[19]
>
> The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.[20]
>
> "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate

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[18] Indeed, § 251(c)(2) by its terms only applies to interconnection for the purpose of the transmission and routing of "telephone exchange service *and* exchange access" (emphasis supplied). It would appear, then, that the interconnecting carrier must offer *both* services.

[19] Communications Act § 3(18).

[20] Communications Act § 3(40).

charge not included in contracts with subscribers for exchange services."[21]

In short, "telephone exchange service" refers to the carriage of "local" calls, i.e., calls within an exchange area, and "exchange access" service refers to the originating or terminating carrier access service provided to ICs, that enables ICs to provide interexchange services. These are both LEC services; indeed, the Act defines a "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access". ICs, when acting as such, do not provide these services. Rather, the service provided by ICs is telephone toll or interexchange service, that is, the carriage of calls (whether intrastate or interstate, intraLATA or interLATA) that go beyond the boundary of the originating caller's exchange carrier. That is, after all, why such carriers are called "interexchange" carriers.

Two other provisions of the Act —§§ 251(i) and 251(g) — further confirm that § 251(c)(2) was not intended to apply to interconnection for provision of interexchange services.[22]

Section 251(i) states that "[n]othing in this section [i.e., § 251] shall be construed to limit or otherwise affect the Commission's authority under section 201." However, as discussed in greater detail below, if §§ 251(c)(2) were held to apply to interstate exchange access, the Commission's authority under § 201 would not only be "affected" and "limited," it

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[21] Communications Act § 3(19).

[22] See NPRM, ¶ 262. The relevance of §§ 251(i) and 251(g) is not limited to § 251(c)(2). As discussed in Section IV of these Comments, below, those sections also place important limitations on the scope of § 251(c)(3).

would be virtually eliminated. It is impossible to square the result with the explicit command of § 251(i).

> Section 251(g) states that each LEC shall provide:
>
> "[E]xchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations *(including receipt of compensation)* that apply . . . immediately preceding the date of enactment . . . under any *court order, consent decree, or regulation, order, or policy* of the Commission until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission . . . ." [Emphasis supplied]
>
> Section 69.1 of the Commission's access rules provides, in pertinent part, as follows:
>
> "(a) This part establishes rules for access charges for interstate or foreign access services provided by telephone companies on or after January 1, 1984.
>
> (b) Except as provided in § 69.1(c), charges for such access service shall be computed, assessed, and collected and revenues from such charges shall be distributed as provided in this part."[23]

Thus, immediately preceding the enactment of the Act, regulations of the Commission (i.e., Part 69) obligated LECs to collect, and ICs to pay, charges for the origination and termination of interstate, interexchange traffic. Section 251(g) therefore requires that LECs (and ICs) comply with the Part 69 regulations unless and until they are superseded by the Commission; this requirement belies any contention that § 251(c)(2) was meant to be used as a vehicle for access charge reform.

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[23] 47 C.F.R. § 69.1.

In short, the language of § 251(c)(2) makes it quite clear that that section has no application to an IC seeking interconnection with an incumbent LEC for the purpose of providing telephone toll service. That section thus cannot be used to compel reductions in or restructuring of access charges.

B. Legislative History

Both the Senate and House versions of the Act established LEC obligations corresponding to those of enacted § 251(c). In each case, a clear intention was manifested to limit such obligations to situations involving the competitive provision of local exchange services.

In the House bill, for example, interconnection obligations of LECs were dealt with in § 242.[24] The House report stated that "Section 242(a)(1) sets out the specific requirements of openness and accessibility *that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities.* The report also explained that the House Bill had "three main components. First, *the bill promotes competition in the market for local telephone service* by requiring local telephone companies (or 'local exchange carriers') to offer competitors access to parts of their network."[25] The Conference Committee's Joint Explanatory Statement observed at page 120 that § 242(b)(1) of the House bill "describe[d] the specific terms and conditions for interconnection, compensation,

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[24] Section 241 of the House bill established a general interconnection obligation applicable to all common carriers. Cf. § 251(a) as enacted.

[25] House Report at 1-2 (emphasis supplied).

and equal access, which *are integral to a competing provider seeking to offer local telephone services* over its own facilities." (Emphasis supplied.)

The intent to focus on local exchange competition is even clearer in the Senate bill and accompanying report. Section 5(2) of the Senate bill (S. 652) contained a statement of findings which included the following:

> "Local telephone service is predominantly a monopoly service. Although business customers in metropolitan areas may have alternative providers for exchange access service, consumers do not have a choice of local telephone service. Some States have begun to open local telephone markets to competition. A national policy framework is needed to accelerate the process."

Section 251(a)(1) of that Senate bill established the duty of LECs that "have market power in providing telephone exchange service or exchange access service" to "enter into good faith negotiations with any telecommunications carrier requesting interconnection between the facilities and equipment of the requesting telecommunications carrier and the carrier, or class of carriers, of which the request was made *for the purpose of permitting the telecommunications carrier to provide telephone exchange or exchange access service*" (emphasis supplied). Moreover, § 251(k) of the Senate bill provided that "Nothing in this section shall affect the Commission's interexchange-to-local exchange access charge rules for local exchange carriers or interexchange carriers in effect on the date of enactment of the Telecommunications Act of 1995."[26]

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[26] No particular significance should be read into the fact that § 251(k) was not included in this form in the final legislation. An argument that Congress had specifically intended to override the Senate provision would be more cogent if § 242 of the House bill had manifested an intention to affect carrier access rates through the imposition of interconnection and unbundling obligations (and if the omission of the language in the final legislation could thus

The Senate Report specifically notes (at p. 19) that "[t]he obligations and procedures prescribed in this section [i.e., § 251] do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the 1934 Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the FCC's access charge rules." This point is repeated at page 22 of the Report: "The Committee also does not intend that section 251 should affect regulations implemented under section 201 with respect to interconnection between interexchange carriers and local exchange carriers."

Nothing in the Conference Report suggests any intention to back off from this clear intention of both the Senate and House bills, and indeed, as discussed above, the language of the final Act confirms the continued intention of Congress to limit the § 251(c) obligations to the facilitation of local exchange competition. Finally, it should be noted that both the House and Senate bills included provisions mandating cost-based access rates.[27] Neither of these provisions made it into the final version of the bill, clearly demonstrating that the Act did not intend that § 251(c) would be used as a "back door" route to access charge reform.

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be read as an adoption of the House's intent over the Senate's), or if the Conference report had indicated such an intention. Yet neither is the case. Moreover, § 251(k) did apparently survive, albeit in somewhat modified form, as § 251(g) of the Act, discussed above.

[27] Both provisions occurred in predecessors of § 272 of the Act. Section 246(i)(3) of the House bill provided that "A Bell operating company or an affiliate thereof shall provide telephone exchange services and exchange access to all providers of intraLATA or interLATA telephone toll services and interLATA information services at cost-based rates that are not unreasonably discriminatory." Section 252(e)(3) of the Senate bill provided that a BOC "shall provide exchange access service to all carriers at rates that are just, reasonable, not unreasonably discriminatory, and based on costs."

C. Inferences To Be Drawn From The Statutory Structure And Purpose

Aside from the fact that it is inconsistent with the clear language and legislative history of the Act, the ICs' interpretation of § 251(c)(2) would overturn several key aspects of the Communications Act in a manner that could not have been intended by Congress. It is important to keep in mind that the Act was not intended as a self-contained law code, but as an *amendment* to an existing body of statutory law: the Communications Act of 1934. To the extent not amended by the Act, the provisions of the 1934 Act (as amended on various occasions between 1934 and 1996) continue to apply. In particular, the 1996 Act did not repeal:

- Sections 1 and 2 of the 1934 Act, which in general give the Commission jurisdiction to "execute and enforce" the provisions of that Act (which provisions apply, among other things, to "all interstate and foreign communication by wire or radio . . . which originates and/or is received within the United States . . . .");
- Section 2(b) of that Act, which in general reserves State jurisdiction over intrastate communications services; or
- Sections 201 through 205 of the 1934 Act, which establish the Commission's power to ensure, through the tariffing process, that the terms and conditions on which interstate services are offered are just and reasonable.[28]

Yet the ICs' interpretation of § 251(c)(2) would in effect repeal all of these provisions, insofar as they apply to carrier access (exchange access) services. Of course, it is clear that *certain* provisions of the Act do change the jurisdictional balance struck by the 1934 Act in certain discrete respects, but if Congress had intended the sort of wholesale jurisdictional upheaval which the ICs' position implies, it surely would have said so more clearly. It is, in short, one thing to say that the Act was intended to set preemptive pricing standards for local

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[28] As noted above, § 251(i) expressly provides that "[n]othing in this section [i.e., § 251] shall be construed to limit or otherwise affect the Commission's authority under section 201".